

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.178 of 2003

1. A. Pavansay, S/o Ghopsay, age 32 years.

B. Sandram, S/o Ghopsay, age 30 years.

Both R/o Village Ulakiya, P.C.No.26, Tehsil Sitapur, Distt. Surguja.

2. Sadhu (Dead) Through LRs

2.a. Sushil, S/o late Sadhu, aged about 25 years, R/o Village Ulakiya, Post Ulakiya, P.S. and Tahsil Sitapur, District Surguja (C.G.)

2.b. Sukaro, Wd/o late Sadhu, aged about 65 years, R/o Village Ulakiya, Post Ulakiya, P.S. and Tahsil Sitapur, District Surguja (C.G.)

2.c. Devanti Bai, D/o late Sadhu, aged about 40 years, R/o Village Jokedand, P.S. and Tahsil Sitapur, District Surguja (C.G.)

2.d. Kamlesh Bai, D/o late Sadhu, W/o Ravi, aged about 38 years, R/o Village Aamatoli, P.S. and Tahsil Sitapur, District Surguja (C.G.)

2.e. Sahadari, D/o late Sadhu, W/o Vimla, aged about 36 years, R/o Village Aara, P.S. and Tahsil Sitapur, District Surguja (C.G.)

2.f. Milanti, D/o late Sadhu, W/o Chamru, aged about 34 years, R/o Village Chidapara, P.S. and Tahsil Sitapur, District Surguja (C.G.)

2.g. Ramita, D/o late Sadhu, W/o Tilak, aged about 23 years, R/o Village Ulakiya, P.S. and Tahsil Sitapur, District Surguja (C.G.)

(Plaintiffs)

---- Appellants

Versus

1. A. Sundar, S/o Jangali, age 36 years.

B. Laiga, S/o Jangali, age 45 years.

C. Rimni (Died and deleted)

D. Khora, S/o Jangali, age 30 years.

All R/o Village Mohardara, Sukhrapara, Tahsil Patthalgaon, Distt. Raigarh (Now Distt. Jashpur)

E. Bhatr, D/o Jangali, age 28 years, R/o Gadadand, Tehsil Sitapur, Distt. Surguja (C.G.)

F. Kaisi, D/o Jangali, age 26 years, R/o Bhavtatikra, Tehsil Dharamjaigarh, P.S. Kapu, Distt. Raigarh.

(Defendants)

---- Respondents

For Appellants: Mr. A.K. Prasad, Advocate.
For Respondents: Mr. Anurag Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

23/01/2019

1. This second appeal was admitted for hearing on the following substantial question of law: -

“Whether the lower appellate Court was justified in dismissing the appeal on the ground of want of necessary party by holding that the suit itself to be not maintainable?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the plaint before the trial Court.)

2. The suit filed by the original plaintiffs Ghopsai, Sadhu and Bhungi against Jangli and one another was dismissed ex parte on 15-7-1994. During the pendency of the suit, defendant No.1 Jangli died and his legal representatives were brought on record by order dated 22-2-1992. Against the dismissal of suit, the plaintiffs preferred appeal before the first appellate Court and also filed application under Order 1 Rule 10 of the CPC stating inter alia that the grand-sons of Jangli may be allowed to be impleaded, as they were necessary party in the suit, which was rejected by the first appellate Court on 28-11-2002 and subsequently, on 13-12-2002 the appeal itself was also dismissed holding that grand-sons of Jangli were necessary party and for want of necessary party, the appeal cannot be heard on merits against which this second appeal has been preferred and substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

3. Learned counsel for the appellants / plaintiffs would submit that the

first appellate Court is absolutely unjustified in dismissing the appeal holding it to be not maintainable merely on the ground that one of the legal representatives were not brought on record, as other legal representatives were already on record and further the first appellate Court ought to have exercised the power conferred under Order 22 Rule 4 of the CPC, therefore, the impugned order is liable to be set aside.

4. Learned counsel appearing for the respondents / defendants would support the impugned order passed by the first appellate Court.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records with utmost circumspection.
6. It is apparent on record that Jangli – defendant No.1 died during the pendency of suit and his six legal representatives were brought on record by order dated 22-2-1992 and ultimately, the suit was dismissed ex parte. The plaintiffs preferred first appeal in which by way of abundant precaution they also filed an application for substitution of some of the legal representatives of Jangli on record who were left to be brought on record before the trial Court. But, instead of granting that application, the first appellate Court rejected that application and consequently dismissed the appeal also holding it to be not maintainable. In any case, the first appellate Court could have noticed the provisions contained in Order 22 Rule 4 (4) of the CPC which provides for exemption to the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing.
7. In the instant case, admittedly, Jangli – defendant No.1 has failed to

appear and has not filed written statement and did not contest the suit, therefore, there was no necessity to bring the legal representatives of Jangli on record and the plaintiffs could have been exempted by the first appellate Court for not bringing one of the legal representatives of Jangli on record, especially when six legal representatives of Jangli were already brought on record before the trial Court, as such, the first appellate Court is absolutely unjustified in dismissing the appeal and the application as well, which cannot be approved.

8. Accordingly, the order impugned passed by the first appellate Court is set aside and the appeal is restored to the file of the 5th Additional District Judge (F.T.C), Ambikapur, for hearing and disposal in accordance with law. The appeal was filed on 30-8-1994. The first appellate Court is directed to hear the parties and decide the appeal in accordance with law, within three months from the date of receipt of a copy of this order. Parties are directed to appear before the first appellate Court on 18-2-2019. No further notice is necessary to the parties who have appeared before this Court.
9. The substantial question of law is answered accordingly and the second appeal is allowed. No order as to cost(s).
10. Record be sent back to the first appellate Court forthwith.

Sd/-
(Sanjay K. Agrawal)
Judge